STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
March 20, 2012

In the Matter of MCFADDEN, Minors.

No. 305816
Wayne Circuit Court
Family Division
LC No. 09-486697-NA

Before: WHITBECK, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court order terminating his parental rights to the minor children pursuant to MCL 712A.19b(3)(c)(*i*) (conditions leading to adjudication continue to exist).[1] We affirm.

I. BASIC FACTS

The two children, ages three and six, were removed from their mother's home on April 13, 2009, after the mother was arrested for disorderly conduct and the home was found to be filthy. The children were placed with their paternal great-grandparents. Respondent reportedly lived in Florida, had recently been released from prison, and did not support the children.

At the adjudication trial on August 12, 2009, respondent's attorney informed the court that he had tried to call respondent in Florida that morning, but that the telephone number he had for respondent had either changed or had been disconnected, and he was unable to reach respondent. Foster care manager Katrina Jackson Butler did not complete a treatment plan for respondent because she did not have any information about him, other than a message he left her indicating that he was homeless and a statement from the children's mother that respondent had not seen the children while they were in her care. The court ordered a treatment plan for respondent that included parenting classes, substance abuse treatment, drug screens, suitable housing, and counseling, but noted that it did not know whether the plan would ever be put into place since respondent had not been located.

[1] The children's mother, Christine Devoy, voluntarily relinquished her parental rights. She is not participating in this appeal.

At a November 16, 2009, dispositional review hearing Butler testified that she could coordinate services for respondent with services he was receiving in Florida, where he was involved in a protective services case regarding a third child. Respondent had had no contact with the children since they were brought into care in April 2009. Respondent admitted that he last saw the children on December 16, 2007. He provided the court with an address and telephone number and the name of his Florida case worker.

At the next hearing, on December 14, 2009, respondent again appeared by telephone, along with a Florida attorney. Respondent's attorney informed the court that respondent wanted the children to be permanently adopted by a family he selected in New York, who had also agreed to adopt the daughter he had in Florida. Respondent's attorney stated that respondent believed his grandparents were too old to care for the children permanently. Respondent's attorney stated that respondent "does not want to plan for the children to be with him," but that he would plan for them to be with him if the court intended to leave the children with his grandparents permanently.

At the next hearing, on January 12, 2010, case worker Butler testified that she was unable to reach respondent at the number he gave her at the last hearing, and that he had not contacted her even though she gave him her contact information. Butler also had no contact with the Florida case worker. Butler testified that respondent had done nothing since the last hearing to demonstrate that he was able to care for the children.

At a dispositional review hearing on April 14, 2010, respondent's attorney indicated that respondent was not available to participate by telephone. Butler testified that respondent was not in compliance with his treatment plan, noting that she "tried contacting Florida in regards to his progress [but] no one was able to give me any information." The children's mother informed Butler that respondent was incarcerated in Florida for carjacking.

At the July 12, 2010, permanency planning hearing, respondent's attorney noted that respondent was not present, stating that "[m]y information is that he's in Florida, perhaps incarcerated." Respondent's grandmother, with whom the children were placed, stated that she did not know where respondent lived, but that she heard that he was out of jail on bond. After case worker Butler stated that no case treatment plan was ever drafted for respondent, the court ordered Butler to draft one before the next hearing.

Respondent did not appear, by telephone or otherwise, at the hearings held in October or November 2010. At a hearing on March 8, 2011, case worker Butler stated that it had been more than a year since she had heard from respondent. The court ordered the attorney general to determine whether respondent was incarcerated and to arrange for him to appear by telephone if he was incarcerated.

Respondent appeared by telephone at the beginning of a pretrial hearing held on March 30, 2011. Respondent did not remain on the telephone for the hearing, however, because he was incarcerated and had to attend a meeting he had scheduled with his criminal attorney. The pretrial hearing was continued to April 15, 2011. At the April 15 hearing, respondent's attorney indicated that he contacted respondent's correctional facility that morning and was told that respondent did not want to participate in the telephone conference.

The court held a permanent custody hearing on June 9, 2011. Respondent appeared by telephone. Butler reiterated her prior testimony that while the case was pending respondent's whereabouts were essentially unknown, that he had not seen the children in at least two years, and that he failed to participate in any court-ordered services. Respondent never came forward to plan for the children. Although he "had someone that was willing to adopt the children," he never followed through with the plan. Respondent provided no financial support or housing for the children, nor did he contact the children in any way, during the pendency of this case.

Respondent testified that he had been living in Florida for at least the past six years. At the time of the permanent custody hearing, he was incarcerated in Pinellas County, Florida, on a charge of attempted carjacking. His trial was scheduled to begin the following week. He was also incarcerated in Florida from 2007 through January 29, 2009, for dealing in stolen property. Respondent testified that he was 28 years old and that he had four living children. Respondent's eldest child lived with the child's mother in Monroe, Michigan, and he voluntarily released his rights to his youngest child, who lived with the child's aunt in New York. Respondent testified that he never received a case treatment plan from petitioner, but that he "spoke to them by phone and they told me to, [be]cause I was already doing a case plan for the youngest child, they told me that they would be in contact with CPI down here to try to, you know, figure out what they wanted me to do as far as the case plan." Respondent participated in parenting classes in Florida with respect to the youngest child's case, but did not complete the classes because he became incarcerated. His Florida plan also included random drug screens, anger management, and attending court dates.

Respondent testified that he sent boxes of clothes to the children in the past, and that he spent approximately $8,000 on the children in the last six years. Respondent acknowledged that he never contacted case worker Butler by telephone or by letter, explaining that (1) he could only make collect calls from jail, (2) he "never needed to" contact Butler because the children were living in an apartment with their mother and he "felt that they were okay," and (3) his attorney was aware of his location. Respondent did not understand that he had an obligation to maintain contact with case worker Butler. Respondent denied ever suggesting that the children should be adopted by a family in New York, stating that he only wanted the youngest child adopted by the New York family. Respondent called the children from jail "like every seven days . . . when I could" and estimated that he spoke to the children 10 times in the past year.

After hearing the evidence, the court found that the statutory ground for termination set forth in MCL 712A.19b(3)(c)(*i*) was proven by clear and convincing evidence. Respondent now appeals as of right.

II. ANALYSIS

To terminate parental rights, the court must first find that at least one of the statutory grounds set forth in MCL 712A.19b(3) was proven by clear and convincing evidence. MCL 712A.19b(3); *In re JK*, 468 Mich 202, 210; 661 NW2d 216 (2003); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). Once a statutory ground for termination of parental rights is established, the court must terminate if it finds that termination of parental rights is in the child's best interests. MCL 712A.19b(5).

This Court reviews a trial court's finding that a ground for termination was established by clear and convincing evidence for clear error. MCR 3.977(K); *In re Mason,* 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *Mason,* 486 Mich at 152.

The court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(*i*), which provides:

> (3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:
>
> * * *
>
> (c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:
>
> (*i*) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

The conditions that led to the adjudication pertaining to respondent were his failure to support the children and his unavailability to care for them. The record contains clear and convincing evidence that these conditions continued to exist at the time of the permanent custody hearing. There was evidence that respondent had not seen the children for years and that he failed to support them financially. Respondent's testimony that he provided $8,000 in support for the children over the past six years was not corroborated by any other evidence. There was other evidence that respondent either was homeless, incarcerated, or unreachable throughout most of these proceedings. Respondent never contacted the case worker to check on the children or to engage in services, and he testified that he did not complete the parenting classes he was attending in Florida because he was incarcerated for a carjacking there. Termination of respondent's parental rights pursuant to subsection 19b(3)(c)(*i*) was proven by clear and convincing evidence.

Furthermore, we disagree with respondent's argument that termination was improper because petitioner failed to make reasonable efforts to locate him and to engage him in services. When a child is removed from a parent's custody, petitioner is required to make reasonable efforts to rectify the conditions that caused the child's removal. MCL 712A.18f; *In re Fried,* 266 Mich App 535, 542; 702 NW2d 192 (2005). "The state is not relieved of its duties to engage an absent parent merely because that parent is incarcerated." *Mason,* 486 Mich at 152. Services aimed at reunification, however, cannot be provided without cooperation from the respondent.

Here, the case worker attempted to contact respondent through the telephone numbers and addresses he provided, through his relatives, and by contacting the Florida case worker. The Michigan case worker also had a criminal check done in Florida in an attempt to contact respondent but was unsuccessful. Where there was evidence that petitioner made efforts to locate respondent to engage him in services, but respondent failed to cooperate by contacting

petitioner to make himself available for services, respondent has not shown that petitioner failed to make reasonable efforts to reunify him with the children.

Finally, the trial court did not clearly err in finding that termination of respondent's parental rights was in the children's best interests. MCR 3.977(K); *In re JK*, 468 Mich at 209. The evidence demonstrated that respondent failed to care for or support the children in the past and that he was unprepared to care for them at the time of the permanent custody hearing. He failed to make himself available for services in this case and made no progress in alleviating the conditions that brought the children into care. We find no clear error in the trial court's best-interest determination.

Affirmed.

/s/ William C. Whitbeck
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly